IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 2006 of 2004

DATE OF DECISION : 23.04.2007

M/s Jai Durgey Ice Factory

.... APPELLANT

Versus

Haryana State Electricity Board and another

..... RESPONDENTS

R.S.A. No. 2130 of 2004

DATE OF DECISION : 23.04.2007

M/s Jai Durgey Ice Factory

.... APPELLANT

Versus

Haryana State Electricity Board and another

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Shiv Kumar, Advocate,
for the appellant.

Mr. Narender Hooda, Advocate,
for the respondents.

This order shall dispose of Regular Second Appeals No. 2006 of 2004 and 2130 of 2004, which have been filed by the plaintiff against the judgment and decree dated 5.2.2004, passed by first appellate court, whereby suit filed by the plaintiff for declaration and consequential relief of permanent injunction has been dismissed, while reversing the judgment and decree dated 16.4.2002, passed by the trial court.

I have heard counsel for the parties and gone through the impugned judgment.

The plaintiff was running an ice factory. It was having an electricity connection with sanctioned load of 45.6 Kilowatt. The premises of the plaintiff-appellant was raided by a vigilance team and it was found that the appellant had direct *`Kundi'* connection for running its factory with the main line of the respondent-Board. On the basis of the report submitted by the raiding party, the proceedings were initiated against the appellant under the rules and regulations of the respondent-Board and a penalty of Rs. 7,39,760/- was imposed upon the appellant. The said order was passed after serving notice upon the appellant.

The trial court, after taking into consideration the evidence available on record, came to the conclusion that the plaintiff has failed to prove its stand that it did not commit theft of electricity. It was held that the appellant was consuming electricity by having direct *`Kundi'* connection with the main line. However, on the basis of a circular, it was observed that the respondents can calculate the amount of theft on the basis of consuming the electricity eight hours per day, multiplied by 25 days in a month. Therefore, suit of the plaintiff was partly decreed and it was held that the defendants are at liberty to impose and recover the penalty amount as per the sale circular by taking eight hours per day and calculating twenty five days in a month for recovering the said amount.

Against the said judgment and decree, both the parties filed two separate appeals before the first appellate court. The first appellate court dismissed appeal of the appellant-plaintiff and allowed the appeal of the respondent-Board, while setting aside the judgment of the trial court. The first appellate court has held that during the raid, it was found that the appellant was using the electricity energy by having direct *`Kundi'* connection with the main line of the respondent-Board. It has been further held that before imposing penalty, a notice was duly served upon the appellant and thereafter, assessment was made and penalty was imposed upon it. The information with regard to the said order was also given, but the appellant, without availing the alternative remedy of filing appeal

against the said order, filed the instant suit. It has been further observed that the ice factory is to be run for 24 hours. It has been found that the appellant did not lead any evidence that its ice factory was not working to its full capacity. It did not lead any evidence to show that the electricity supply was only for 7/8 hours per day. It has been held that the trial court has wrongly presumed that supply to rural area is not for more than seven to eight hours and such finding should not have been recorded without taking into consideration the documentary record, which was not produced by the appellant. It has been further found that Shri R.N. Suman, SDO, who appeared as DW.1, has proved that the assessment of penalty was calculated by taking 20 hours per day for 25 days in a month. When the notice of recovery was issued, the plaintiff was having an opportunity to file an appeal against the impugned assessment before the XEN (Operations Division), Old Faridabad, but despite such alternative and efficacious remedy, the plaintiff did not prefer such appeal and filed the instant suit. Therefore, it has been held by the first appellate court that the present suit is not maintainable.

After hearing the arguments of learned counsel for the parties, I do not find any illegality or perversity in the impugned judgment and decree passed by the first appellate court. Once the plaintiff-appellant was found to have committed theft of electricity by applying direct *`Kundi'* connection to the main line and when it did not avail the alternative remedy in spite of the opportunity granted to it, I do not find any ground to interfere in the impugned judgment and decree. No substantial question of law is involved in these appeals.

Dismissed.

April 23, 2007 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**